STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE THE DIVISION OF INSURANCE

IN THE MATTER OF

BOREALIS BROADCASTING, INC.

Applicant/Appellant

Case No. H99-01

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER

I. Background and Procedural History

Borealis Broadcasting Inc. ("Borealis") is a Fairbanks company engaged in radio broadcasting. It does not conduct any business related to television, filming, or video production. Workers' compensation insurance rates for Borealis' insurance company are based on a rating system developed by the National Council on Compensation Insurance ("NCCI"), a rating organization.

For purposes of worker's compensation insurance, most of Borealis' employees are classified under the NCCI designation of Code 7610, Radio or Television Broadcasting Station, All Employees & Clerical, Drivers. This classification includes employees in the radio and television industries, as well as some film and video production companies.

Borealis submitted a written request to NCCI asking that television and radio broadcasters be separately classified. Borealis advanced the position that the radio and television industries present distinctly different risk exposures. According to Borealis, radio broadcasting is essentially a clerical activity, with employees sitting behind desks and microphones, reading and talking on the phone and using computers. Radio news is mostly provided by outside wire services, eliminating the risks encountered by reporters in the field. Television, in contrast, involves use of heavy moving cameras and microphone booms, and mobile reporting.

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Borealis also requested that its clerical workers be classified under Code 8810, Clerical Office Employees NOC. This classification is used generally for clerical employees of various different industries that are not otherwise classified to their respective industries, as are radio and TV clerical employees.

Rating organizations in Alaska are required to "provide within this state reasonable means for a person aggrieved by the application of its rating system to be heard, in person or by an authorized representative, on a written request to review the manner in which the rating system has been applied in connection with the insurance." AS §21.39.090. Following a hearing by the rating organization, a party may appeal the action of the rating organization to the director, who may affirm or reverse the action of the rating organization. *Id.*

NCCI apparently meets its obligation to hear requests by referring them to the Alaska Workers Compensation Review and Advisory Committee ("the Committee"). The Committee is organized under 3 AAC 30.200. Its sole purpose is to "assist and advise the director regarding workers' compensation matters." 3 AAC 30.200. The Committee has no independent authority, and its decisions have no legal presumption of validity. Although it is not clear from the record, it appears that the Committee agreed to hear Borealis's request primarily as a courtesy to NCCI, and not directly as part of its duty to assist and advise the director. The responsibility to hear and review Borealis' request lies with NCCI, not the Committee. Thus, actions or decisions of the Committee in this context are attributable to NCCI.

On October 15, 1998, the Committee first considered Borealis' request. A "summary sheet" prepared as part of the Committee's agenda contained the following notation:

> The following issues should be considered to determine whether a new class should be established for a particular industry:
>
> 1. Is the type of business homogeneous from one operation to the next?
> 2. Is there adequate payroll to assure rate credibility?
> 3. Are the exposures of the class of business significantly different than other businesses contemplated by the existing code?
> 4. What would be the effect on the remaining code if these operations were separately classified?

The Committee had some general discussion of the request, and concluded that it did not have enough information to make a decision on the request. The Committee directed NCCI to provide statistical data to aid in its decision. NCCI provided statistics regarding the

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proportionate division of radio, TV and other types of insureds within the class, and the respective payroll and claims experience of these groups. NCCI noted that radio never generated more proportionate losses than television, except during 1993 and 1994. However, during these two years radio was heavily influenced by the experience of the Martin Marietta Corporation. During these two years, Martin Marietta reported payroll of $18,893,000 and losses in excess of $889,000. By way of comparison, the entire payroll for Code 7610 in 1997 was $12,276,000. The Committee questioned whether Martin Marietta's experience was properly classified under Code 7610, and it directed NCCI to investigate further. However, the Committee proceeded to issue a decision denying Borealis' requests at that time.

The only record the Committee made of its proceedings is contained in its minutes. The information contained in the minutes about how the decision was reached was conveyed by a letter from NCCI to Borealis dated February 5, 1999. According to this letter, the Committee concluded that Code 7610 was divided as follows:

Radio:	37%
Television:	45%
Businesses with both Radio and TV:	11%
Other, including video and film production:	7%

The only analysis of the question of whether to separate radio from television is contained in the fourth paragraph of the letter:

> The claims analysis determined that the paid losses associated with radio verses [sic] television operations were proportionate to the mix of business. In fact, during 1993 and 1994, radio operations generated more losses than television operations. A review of the current individual experience modifiers for radio operations determined that the average modifier is 1.01. The average experience modifier for television operations is 1.13. Based on the claims review, the Committee determined that the loss exposure between radio and television operations are not significantly different.

The Committee apparently did not discuss the suggested criteria in the agenda summary sheet or explain what, if any, criteria were considered.

The Committee considered Borealis' second request, that its clerical workers be classified to Code 8810, in somewhat greater detail. The Committee concluded that most of the operations of a radio station are clerical in nature, but that separation of the broadcast industry's clerical employees could result in misclassifications. The Committee also noted that the existing rate for

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Code 7610 had been developed with clerical experience included. As most of the operations currently classified to Code 7610 include clerical duties, the Committee found that inclusion of clerical employees was not discriminatory.

Borealis requested a hearing to review the Committee's decision, and requested copies of the information the Committee relied on. After reviewing this material, Borealis alleged that the data relied upon by the Committee was flawed and incomplete. In addition to its original requests, Borealis also requested that rates for Code 7610 be reviewed and adjusted based on the possibility that Martin Marietta's experience had been improperly included in the classification.

Upon the direction of the Director of Insurance, a hearing was held on May 14, 1999 pursuant to AS §21.39.090. Representatives of Borealis and NCCI appeared, both without counsel. As AS §21.39.090 does not specify burdens of proof or standard of review, the parties agreed at the outset of the hearing that the hearing officer should first determine whether Borealis has established that it is more likely than not that the Committee erred in its decisions. Upon such a finding, the burden would shift to NCCI to show by the same standard that it did not err.

At the hearing, NCCI reported that the Martin Marietta data had in fact been improperly classified, and that the current rates for Code 7610 were currently being revised based on the correct data. Borealis asserted that adjustments should be made retroactively. Though the hearing officer questioned whether Borealis had raised this issue before the hearing, it is clear in a letter of March 24, 1999 that Borealis submitted to the hearing officer that it sought a retroactive rate adjustment based on the improper inclusion of the Martin Marietta data. Prior to the hearing, Borealis also identified three companies whose experience had not been included in the information provided to the R&A Committee, including Borealis' own experience. These three companies together consist of 16 radio stations and two television stations. According to NCCI, these three companies had a combined payroll of $6,300,000.

Neither party presented evidence at the hearing. Both parties rested primarily on the material submitted by the parties, with some additional argument. NCCI admitted that Borealis was correct in its assertions regarding inclusion of the Martin Marietta data and the three other companies, but argued that the Committee nevertheless had adequate information to evaluate Borealis' request regarding separation of radio and TV. NCCI argued that the members of the Committee had a great deal of experience in the insurance industry and that their judgment

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should not be overridden. It was not suggested that the Committee had any particular knowledge of the broadcasting industry. NCCI emphasized that any change in classification codes would impact NCCI's ratemaking operations nationwide, and thus should not be undertaken lightly. As to the question of whether Borealis' clerical workers should be included in Code 8810, NCCI argued that this change would result in misclassifications due to confusion among insureds as to how to classify employees. NCCI further pointed out that even if purely clerical employees were accurately placed in Code 8810, the rates for employees remaining in Code 7610 would theoretically go up, resulting in most insureds paying, on average, approximately the same overall rates they are paying now. Borealis admitted that classification of clerical workers within Code 7610, as opposed to 8810 is fair if uniformly applied. Borealis asserted that its principal concern was that television operations were significantly riskier than radio, and that it is unfair for radio operations, which are primarily clerical, to be rated in the same category as the more risky television and film industry. Borealis admitted the difficulty of presenting concrete evidence to back up this assertion other than anecdotal accounts, perceptions of those within the industry, and the experience data held by NCCI.

II. Issues:

1. Should rates for Code 7610 be corrected for erroneous experience data?
2. If the rates should be adjusted, should they be adjusted prospectively only, or both prospectively and retroactively?
3. Did NCCI and the Committee err by denying Borealis' request to reclassify clerical employees Code 8810?
4. Did NCCI and the Committee err by denying Borealis' request to separately classify television and radio operations?

III. Findings of Fact:

1. Martin Marietta's experience for the years 1993-1994 was improperly classified to Code 7610. Martin Marietta's payroll is so large in proportion to the balance of the insureds in the classification that this erroneously classified experience data may have resulted in improper rates for all insureds within this code. It is unclear whether loss experience for Borealis

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Broadcasting, Pacific Star, and Northern Television and Radio were considered for purposes of ratemaking for Code 7610. If they were not included, they should have been.

2. Rating for Code 7610 currently takes into account the clerical nature of the majority of operations within the classification. Permitting radio stations to classify their clerical workers in Code 8810 would likely result in misclassifications, while not producing a significant change in overall rates for insureds currently classified within Code 7610.

3. The data upon which the Committee based its decision to not separate radio and television operations was not reliable. Significant amounts of loss experience that should not have been included were, and significant data that should have been included was not.

4. Even if the data had been reliable, the Committee has not created an adequate record to permit review of its decision not to separate radio and television classifications. In spite of the fact that radio has never generated as much in losses as television, and (based on the flawed data) individual experience modifications for television average about 12% higher than for radio, the Committee summarily concluded that loss exposures do not significantly differ for radio and television. No evidence has been presented to indicate that there was a discussion of why 12% was not significant, what percentage would be significant, or what spreads existed in other similar industries that are separately classified. No mention was made of the criteria listed in the first agenda summary. There is no evidence that any persons from the respective industries were consulted. The Committee did not identify what criteria it was using, what criteria it should use, or what standards should be applied to analyze relevant criteria.

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IV. **Conclusions of Law:**

1. There is no dispute that the Martin Marietta data should not have been applied to Code 7610. NCCI has indicated that it is properly adjusting rates for the code to reflect the appropriate loss experience. NCCI should at the same time adjust rates to accurately reflect the experience of any other companies that was not included in the calculation of the current rate.

2. NCCI should not be ordered to make retroactive rate adjustments. While it is clear that NCCI is correct to reevaluate the current rates for Code 7610, the question of whether retroactive rate adjustments should be made is a more difficult question. It is disturbing that the rates for recent years have been based on flawed data; it is also disturbing to consider the practical difficulties of going back several years and changing all the rates for every insured in Code 7610 and the code in which Martin Marietta should properly have been classified to.

NCCI establishes its rates by filing proposed rates with the director pursuant to AS §21.39.040. Once the director approves the rates, NCCI and its member insurance companies may not deviate from the approved rates without the specific permission of the director. AS §21.39.070. A procedure for an insured that is aggrieved by a rate filing is contained in AS §21.39.050(d):

> A person or organization aggrieved by a filing which is in effect may make written application to the director for a hearing.... The application shall specify the grounds to be relied upon by the applicant and the application must show that the person or organization making the application has specific economic interest affected by the filing. If the director finds that the application is make in good faith, that the applicant has a specific economic interest, that the applicant would be so aggrieved if the grounds are established, and that the grounds otherwise justify holding a hearing, the director shall within 30 days after receipt of the application hold a hearing upon not less than 10 days written notice to the applicant and to every insurer and rating organization that made the filing.... If, after the hearing, the director finds that the filing does not meet the requirements of this chapter, the director shall issue an order specifying in what respects that the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing shall be considered no longer effective. Copies of this order shall be sent to every insurer and rating organization which made the filing. *The order shall not affect a contract or policy made or issued before the expiration of the period set out in the order.*

Id. (emphasis added). It is clear that legislature has balanced these concerns, and concluded that an aggrieved insured should be able to get an improper rate changed, as Borealis has done in this case. However, the legislature has also determined that even if an approved rate were made in violation of the law, the director does not have the power to upset contracts that were previously made in reliance on an officially approved rate. Thus, NCCI should be ordered to adjust the rates for Code 7610 prospectively, but not retroactively.

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3. The loss experience for clerical workers in the radio industry is reflected in current rates for Code 7610. Permitting clerical employees in the radio industry to be classified in Code 8810 could result in misclassifications and could adversely affect rates for clerical workers in other industries. Rate adjustments for employees remaining in the class would be likely to negate any rate advantages for employers. The Committee did not err in denying Borealis' request to reclassify clerical employees in the broadcasting industry to Code 8810 instead of Code 7610.

4. Borealis has established that it is more likely than not the Committee erred in denying its request to separate the classifications for radio and TV. Although it did not produce any substantial evidence of its own, an insured cannot be expected to provide significantly more data than that in the custody of the rating organization. In this case, Borealis identified specific reasons why the television and film industry might be more risky than the radio industry. The data provided by NCCI, though flawed and incomplete, shows a difference in experience modifications of approximately 12% in favor of Borealis' proposition. This is enough to at least shift the burden to NCCI to demonstrate that the classification should not be separated.

NCCI did not make a substantial demonstration that the classification should not be split. In spite of measurable differences in the experience modifications, the Committee provided little more than a cursory statement that the loss exposures for radio and television are not significantly different. The Committee did not provide a substantial analysis of the data it relied on. Neither the letter that was sent to Borealis nor the minutes of the Committee adequately address Borealis' concerns.

AS §21.39.090 requires rating organizations to "provide within this state reasonable means for a person aggrieved by the application of its rating system to be heard...on a written request to review the manner in which the rating system has been applied in connection with the insurance." "Reasonable means" require that the organization apply articulable objective criteria to accurate data. To avoid unfair discrimination, the same criteria should be used consistently in any future requests for modifications to the rating system.

A reasonable response to a written request is a written explanation of what criteria were used, and how the application of the criteria to the available data resulted in the conclusions of the rating organization. The Committee no doubt does possess a great deal of knowledge and

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experience in the matter of rating risks, if not in the workings of the broadcasting industry. However, the failure to provide a sufficient record of how the decision to deny Borealis' request, and the failure to logically apply appropriate criteria, does not meet NCCI's statutory burden of providing reasonable means of redress for aggrieved insureds. Further, this way of proceeding deprives the director of any reliable basis for exercise of her statutory duty to review decisions made or adopted by NCCI in this context.

The Committee, and thus NCCI, also erred by basing its decision on flawed and incomplete data. In fairness, the Committee was unaware of the missing experience data for Borealis and the other two companies at the time of the decision, and it identified the suspiciousness of the Martin Marietta data and directed NCCI to investigate further. Nevertheless, in retrospect it is clear that the data was substantially flawed and incomplete.

While the Committee may in fact have reached the correct conclusion in this case, its reliance on flawed data erodes public confidence in the fairness of the system. NCCI and the Committee should be ready to review this decision based on careful analysis of the data now available.

V. **Proposed Decision:**

1. NCCI shall file as soon as possible a rate filing for Code 7610 that is based on the most accurate and complete experience data currently available.

2. NCCI shall not be required to make any retroactive rate adjustments.

3. NCCI's denial of Borealis' request to classify its clerical employees to Code 8810 is affirmed.

4. NCCI and the Review and Advisory Committee shall again review Borealis' request to separate radio and television operations into different codes. As part of this review, the Committee shall

a. identify appropriate criteria and standards by which a request to separate classification codes should be analyzed;

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b. analyze Borealis' request in light of the listed criteria and correct statistical data;

c. make specific findings of how the criteria apply to Borealis' request; and

d. prepare a written report which details the Committee's analysis and explains how and why it reached its decision.

The Committee shall provide a copy of its report to the director and to Borealis.

Signed at Juneau this 15th day of June, 1999.

DALE WHITNEY
Hearing Officer

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BEFORE THE DIVISION OF INSURANCE

IN THE MATTER OF

BOREALIS BROADCASTING, INC.

Applicant/Appellant

Case No. H99-01

DIRECTOR'S DECISION

Having reviewed the Findings of Fact, Conclusions of Law and Proposed Order of the hearing officer in this case, the Director of Insurance hereby

__✓__ adopts the Proposed Order in its entirety.

Signed this 21st day of June, 1999.

MARIANNE K. BURKE
Director of Insurance

_____ rejects the Proposed Order and remands this case to the hearing officer to receive additional evidence on the following issues:

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___

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Signed this _____ day of June, 1999.

MARIANNE K. BURKE
Director of Insurance

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NCCI National Council on Compensation Insurance, Inc.

Business Classifications And Rating Services

Tim Hughes
Appeals Manager

August 31, 1999

Hearings Office Dale Whitney
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Division of Insurance
JUNEAU OFFICE

Re: **Borealis Broadcasting, Inc.**
Case No. H99-01

Dear Mr. Whitney:

The Alaska Review and Advisory Committee (Advisory Committee) held a meeting on July 22, 1999. At this meeting, Advisory Committee members reviewed a letter from Director Burke dated June 30, 1999. The Director's letter addressed the issue of Advisory Committee members also serving in the capacity as the rating organization's Employer's Appeal Committee (Committee).. Director Burke stated that the function of the Advisory Committee is to "assist and advise the director regarding workers compensation matters." While not opposed to Advisory Committee members serving in both capacities, the Director emphasized that each function must maintain a clear distinction of responsibilities.

The members discussed the dual role of serving as the Advisory Committee and the rating organization's employer appeals committee. To confirm their willingness to continue to serve as the employer appeals committee, a formal motion was made, seconded and passed by unanimous vote and it was

Resolved The members of the Advisory Committee agree to continue to serve as the NCCI employer appeals committee in accordance with AS 21.39.090.

In further addressing the employer appeals process, Director Burke recommended that a more comprehensive record be made of the Committee's deliberation and analysis. The Director affirmed your findings that the Committee's minutes and decision letter in the Borealis Broadcasting appeal lacked sufficient details to determine the validity of the final decision.

Concerning the Borealis Broadcasting appeal, the Director's Decision, issued June 21, 1999, called for the Committee to review its decision [V - Proposed Decision: 4., page 9]. The Director stated the review should:

1. Identify appropriate criteria and standards by which a request to separate classification codes should be analyzed.
2. Analyze Borealis' request in light of the listed criteria
3. Make specific findings on how the criteria apply to Borealis' request

4. Prepare a written report that details the Committee's analysis and explains how and why it reached its decision.

The following analysis is offered in response to the Director's Decision.

ANALYSIS

The Committee considered the following criteria in determining if a separate classification should be erected for radio broadcasting operations:

1. Are the operations / exposure to injuries significantly different from other businesses included within the current classification?

The Committee identified four categories of businesses within Code 7610. The four categories are Radio Broadcasting Operations, Television Broadcasting Operations, combined Radio and Television Broadcasting Operations, and miscellaneous video/movie productions. To determine if the various operations have similar exposure to injuries, the Committee compared the experience rating modifier for each eligible business. This modifier compares the loss experience of an individual business with the average loss experience of other businesses classified to the same code. If the individual business experience is better than the average of the class as a whole, a credit modifier (expressed in a factor less than 1.0) is produced. If the individual experience is worse than the average, a debit modifier (expressed in a factor greater than 1.0) is produced. If the various categories included in the class share common exposures, the average experience modifier for each category should be similar to the average of the class as a whole.

The following list of businesses represents the most current data available for each operation. The businesses are separated into the four identified categories. The most current experience rating modifier is included for each business eligible for the rating plan.

1) Radio Broadcasting Operations:

NAME	PAYROLL	MOD
Aleutian Peninsula Broadcasting	46,000	-
AK Broadcast Communications	324,000	.86
AK Information Radio	102,000	1.07
AK Juneau Communications	538,000	.83
Big River Public Broadcasting	81,000	-
Borealis Broadcasting	315,000	.82
Chinook Concert Broadcasters	230,000	.87
Gulkana Weather	40,000	-
Kachemak Bay Broadcasting	214,000	.86
KBRW AM Barrow	500,000	.84
KMBQ Corp.	125,000	-
Kodiak Public Broadcasting	199,000	1.0
Koahnic Broadcast Corp.	575,000	.93
Kotzebue Broadcasting, Inc.	275,000	1.31
KSKO Radio	234,000	.91

KSRM, Inc.	167,000	.91
Lutheran Mission Society	37,000	-
Lynn Canal Broadcasting	130,000	.90
Narrows Broadcasting	120,000	1.0
Pacific Star Communications	3,384,000	1.0
Peninsula Communications	157,000	.87
Pioneer Broadcasting, Inc.	272,000	1.01
Pribil School District	50,000	1.26
Raven Radio	252,000	.86
Talkeetna Community Radio	68,000	-
Terminal Radio	83,000	.91
Wrangell Radio Group	122,000	1.0
Rainbird Community Broadcasting	163,000	.89

Total Payroll	**$8,803,000**	
Average Experience Modifier (22 rated risks)		**.95**

2) Television Broadcasting Operations:

NAME	PAYROLL	MOD
Capital Community Broadcasting	964,000	.80
Fireweed Communications	396,000	1.12
Hoonah Community Cable TV	58,000	-
Smith Broadcasting	1,909,000	1.21
Tanana Valley Television Co.	450,000	.84
Unalaska Community TV	100,000	1.0
Zaser & Longston, Inc.	2,861,000	.82
KTNL Television	29,000	-

Total Payroll	**$6,767,000**	
Average Experience Modifier (6 rated risks)		**.96**

3) Businesses Having Both Radio and Television Broadcasting Operations:

NAME	PAYROLL	MOD
AK Public Telecommunications	1,309,000	.99
Bethel Broadcasting	475,000	.80
KJNP Radio TV Station	105,000	-
Northern Television, Inc.	2,500,000	.82

Total Payroll	**$4,389,000**	
Average Experience Modifier (3 rated risks)		**.87**

4) Businesses other than Television and Radio Broadcasting Operations Classified to Code 7610:

NAME	PAYROLL	MOD
IMIG Audio Video	157,000	-
Murrow Media	22,000	-
Alaska Video Postcards	160,000	-
Chasman Production Services	20,000	-
Curtis Production Services	20,000	-
AVT Productions	42,000	-
Surreal Studios	104,000	-
Baker Jennings Films	62,000	-
Connections	139,000	-
Buzz Rohling, Inc.	240,000	.88
Cline High Production	21,000	-

Total Payroll	**$ 987,000**	
Average Experience Rating Modifier (1 rated risk)		**.88**

The difference in the average experience modifier between radio broadcasting and television broadcasting is one percentage point. The data reviewed by the Committee in its prior analysis produced a 12 point percentage difference. Each experience modifier is based on three years of loss experience. Each year the employer's modifier is recalculated to include the most current year of eligible experience and to delete the oldest year of experience. The change in percentages from the first reported analysis to the above analysis is the result of using different experience periods.

Those businesses that conduct both types of operations had average modifiers lower than a stand-alone operation. Based on this review, the Committee concluded that the exposure to loss by radio broadcasting operations was similar to that of other operations contemplated by Code 7610. The Committee's analysis of the loss exposure did not support the request to separately classify radio from television broadcasting operations.

At the Committee hearing, the Borealis Broadcasting representative stated that radio broadcasting operations have less exposure to injury as they generally do not employ outside news crews. Generally, radio newscast material is received via one of the national news wires. Television news on the other hand, will often send reporters to cover local accident scenes, special events, etc. Further, the Committee was advised Borealis employees do not service transmitting equipment or broadcasting towers, both of which are operations included within the scope of Code 7610.

In discussing these exposures, the Committee acknowledged that television stations might have a greater outside exposure by sending reporters to cover news. However, Committee members held that much of the television news is also produced in-house, either through the wire services or the station's national affiliation. Certain Committee members also held that most radio and television stations do not employee their own workers to work on equipment or towers. This work is contracted out to specialty contractors.

The similarity in experience rating modifiers does not support Borealis' position that radio operations have significantly less exposure to injury than television operations.

2. <u>What affect would separately classifying a sub-group of businesses have on the class as a whole?</u>
There are businesses classified to Code 7610 that include both radio and television operations. The Committee reasoned that if radio operations were separated from Code 7610, classifying employees who work for business with both operations could be confusing and may lead to the misclassification of payroll. Any misclassified payroll reduces the credibility of rate making, both for the code not receiving the proper data, and for the code where the misclassified data was captured. The Committee held that maintaining the current classification limits the opportunity for misclassification, thereby promoting rate credibility for the overall code.

3. <u>Is there adequate payroll to assure rate credibility for both a new classification as well as the businesses remaining class?</u>
The loss cost rate (rate) developed for each classification is based, in part, on an analysis of losses to the code's total payroll. Each classification must have a significant amount of payroll to assure a credible rate can be produced. Generally, the higher the reported payroll, the higher the credibility / accuracy of the rate. If a state has a minimal amount of payroll reported in a classification, the overall national experience for that classification is included in developing that state's rate. If the national experience was not used to temper the rate, an adverse loss year could result in a wide swing in the rate. Even a single large loss might have a significant impact on the rate.

If Alaska adopted a new state special classification for radio broadcasting operations, the rate developed for this new classification would be based solely on the experience of Alaska businesses. There would be no national experience to temper the rate as a national classification for radio broadcasting operations does not exists. Neither could a new code rely on the national credibility of the old code, as the two codes no longer share a common mix of businesses. Based on the current data available, the payroll for radio broadcasting operations represents approximately 42% of the total class. The Committee expressed concern that a new code may not have an adequate payroll base to assure a stable rate.

The 1/1/99 rate filing for Code 7610 reported the Alaska Pure Premium credibility factors as 25% for Serious Losses, 50% for Non-Serious Losses, and 66% for Medical payments. These credibility factors indicate what portion of state specific data verses national data is used in developing the rate. The above state credibility factors will be even less when the misclassified payroll from the Martin Marietta policies are corrected and removed from Code 7610. To further remove 42% of the payroll to create a new classification for radio broadcasting operations would reduce the code's creditability even lower. The lower the state's credibility, the greater the reliance on the national experience to develop the rate for Alaska. It is generally viewed desirable for a classification to have high state credibility as this produces a rate more reflective of the state's true experience.

Based on the Committee's review of payroll and rate credibility issues, members did not believe it desirable from a rate making perspective to separate the current code.

4. <u>What would be the effect on the remaining businesses if these operations were separately classified?</u>
If a separate classification was erected for radio broadcasting operations, the remaining businesses in Code 7610 would be affected by having more national creditability applied to the Alaska rate for Code 7610. Depending on the national experience, this could have a positive or negative impact on the Alaska rate.

A separate classification for radio broadcasting operations may create confusion / misclassification for operations that conduct both radio and television broadcasting operations.

Businesses that operate both radio and television stations would be required to separate the payroll for each operation, as each would have a separate rate. A separate classification would increase the administrative record keeping requirements placed on such businesses.

The Committee held that a single classification minimizes misclassifications and the record keeping burden placed on the employer.

5. Do other businesses in the classification favor the proposed change?
The radio broadcasting industry at large did not request the proposed change. The request was made by a single entity and was not represented as having the endorsement of any state or national association. On a national basis, no other state has determined to separately classify radio operations from television operations.

CONCLUSION
A review of the experience rating modification factors does not support the position that radio broadcasting operations are significantly different from the other operations contemplated within Code 7610. To create a separate classification would reduce the already low state credibility factors for Code 7610, resulting in a rate that is more reflective of the national experience rather than the Alaska experience. Creating a state special for radio broadcasting operations would produce a stand-alone rate. There would be no national experience to temper an adverse claims year. A single classification minimizes the potential for misclassification and keeps required employer record keeping at a minimal. The request of Borealis Broadcasting appears to be the request of a single business, not that of the industry at large. No other states have adopted a similar request.

The Committee determined that a change to the current classification treatment of radio broadcasting operations is not warranted at this time.

Sincerely,

Tim Hughes
Appeals Manager

C: John Ference - Acting Director of Insurance

Gary Purdom - Committee Chair

Louis F. Delong - Borealis Broadcasting, Inc.